IOWA

PUBLIC EMPLOYMENT RELATIONS BOARD

ANNUAL REPORT

FY2014

July 1, 2013 to June 30, 2014

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IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

TABLE OF ORGANIZATION

FTE = 10

CHAIR (1)
Michael G. Cormack

BOARD MEMBERS (2)
Janelle L. Niebuhr
Jamie K. Van Fossen

Adjudication	Elections	Mediation	Arbitration	Labor/Mgmt. Cooperation	Research & Information	Administration
-Unit Determinations -Prohibited practice adjudications -State merit grievance and disciplinary appeals -Iowa Code section 70A.28(6) disclosure retaliation claims -Negotiability disputes -Declaratory rulings -Preparation & presentation of briefs & oral arguments in court	-Monitor shows of interest -Conduct elections & ballot counts -Certify employee organizations receiving majority support -Decertify employee organizations where election reveals lack of majority support	-Contract mediation -Grievance mediation -Case processing (All cases filed at PERB are informally mediated to explore settlement potential) -Selection & training of ad hoc mediators	-Establish neutral qualifications -Select applicants for inclusion on PERB neutral panels -Train neutrals re: requirement of Iowa law -Provide neutral lists to parties on request -File & maintain interest arbitration decisions	-Interest-based bargaining (IBB) training and facilitation -Labor-management committee (LMC) training and facilitation -Speaking engagements	-PERB decisions -Maintain electronic research & retrieval databases consisting of contracts, PERB & court decisions & neutral decisions -Annual report IPERB newsletter -Informational speaking engagements -Provide agency information via PERB's website -Biennial PERB conference	-Budgeting, accounting and personnel services for the agency -Purchasing and inventory support for agency -Board meetings/minutes -Analysis & special project support -Compliance oversight of annual reports filed by CEOs -Case docketing & case management -PERB library maintenance -Electronic filing

PROFESSIONAL STAFF: (5)

Jan Berry	Administrative Law Judge
Susan Bolte	Administrative Law Judge
Diana Machir	Administrative Law Judge
Vacant	Administrative Law Judge
Vacant	Administrative Law Judge

SUPPORT STAFF: (2)

Leisa Luttrell	Administrative Secretary
Nancy Anders	Legal Secretary

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HISTORY AND PURPOSE

In the earlier part of the 20th century, the labor movement in the United States was focused largely on the private sector. By 1970, the labor movement had grown in the public sector, including in Iowa. Even though union activity in the public sector was generally not legally protected, public employees were organizing anyway. Since most states provided no peaceful dispute resolution alternatives to the strike, disruptive strikes among teachers, nurses, city garbage and transit workers, firefighters, and other public employees were rampant across the country. These disruptions in the delivery of public services and the hostilities that developed between public employers and employees were devastating and costly to communities nation-wide. Recognizing this fact and wishing to prevent such problems in Iowa, the legislature passed the Public Employment Relations Act, Iowa Code chapter 20 (PERA) in 1974, and established the Public Employment Relations Board (PERB) to administer it.

The PERA has been such a resounding success that it is now simply taken for granted that labor disputes between public employers and employees in Iowa will be resolved peacefully and without a strike or other costly disruption of public services. The impasse resolution system adopted by the legislature and administered by PERB has been hailed by other states as a model for effective and peaceful dispute resolution. A New York newspaper editorialized in 2002 that, "To those who insist that there has to be a better way than New York's for resolving municipal labor disputes, look west. Iowa has devised a system that encourages negotiation, even after impasse is declared. . . Iowa's law continually pushes the parties closer together, while New York's rewards mulishness . . . New York's law needs to change. Any legislator who wants to take on the task should begin by looking to the Hawkeye state."

Other states without an effective law continue to suffer costly strikes among teachers and other public employees. The absence of strikes in the Iowa public sector makes it clear that PERB provides vital cost-saving services to the state. The citizens of Iowa can be proud of the success of the PERA and PERB in fostering cooperative employment relationships and peacefully resolving public sector labor disputes.

MISSION STATEMENT

To promote harmonious and cooperative relationships between government and its employees without disruption of public services, via the expert and timely services of a neutral agency

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PERB's mission is derived from Section 1 of the Public Employment Relations Act, Iowa Code chapter 20, which establishes the powers, duties and responsibilities of the Public Employment Relations Board. During FY14, that section provided:

1) The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

2) The general assembly declares that the purposes of the public employment relations board established by this chapter are to implement the provisions of this chapter and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include but are not limited to the following:

    a. Determining appropriate bargaining units and conducting representation elections.

    b. Adjudicating prohibited practice complaints including the exercise of exclusive original jurisdiction over all claims alleging the breach of the duty of fair representation imposed by section 20.17.

    c. Fashioning appropriate remedial relief for violations of this chapter, including but not limited to the reinstatement of employees with or without back pay and benefits.

    d. Adjudicating and serving as arbitrators regarding state merit system grievances and, upon joint request, grievances arising under collective bargaining agreements between public employers and certified employee organizations.

    e. Providing mediators and arbitrators to resolve impasses in negotiations.

    f. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

    g. Preparing legal briefs and presenting oral arguments in the district court, the court of appeals, and the supreme court in cases affecting the board.

OVERVIEW

The Public Employment Relations Board (PERB) was established effective July 1, 1974, by the General Assembly's enactment of the Public Employment Relations Act (PERA), Iowa Code chapter 20.

The PERA defines the collective bargaining rights and duties of public employers and public employees in Iowa. It has broad coverage, applying to virtually all public employees within the state except supervisors, confidential employees, and other classifications specified in Iowa Code section 20.4.

The PERA provides that public employees may organize and bargain collectively with their employers through labor organizations of their own choosing. To assure that representation by a labor organization is truly the employees' choice, secret ballot representation elections are conducted by PERB. To insure that the rights of public employers, employee organizations and employees are protected and to prevent labor disputes from resulting in the disruption of services to the public, the Act defines certain prohibited labor practices and provides PERB with the statutory authority to fashion appropriate remedial relief for violations of the PERA.

The PERA requires a public employer to bargain with its employees' designated labor organization. The subjects upon which bargaining is mandatory are set forth in Iowa Code section 20.9, which provides a more limited scope of bargaining than the traditional "wages, hours, and other terms and conditions of employment" applicable in the private sector under the National Labor Relations Act.

Strikes are prohibited in the Iowa public sector, with strong sanctions imposed in the event of an illegal work stoppage. In lieu of the right to strike, the PERA contains a detailed procedure for the resolution of collective bargaining impasses. Until 1991, the statutory impasse-resolution procedure which applied to all bargaining units and public employers was a three-step system consisting of mediation, followed by fact-finding and culminating in binding arbitration if no voluntary agreement had been reached. In 1991 the General Assembly modified the statutory procedure for bargaining units of teachers licensed under Iowa Code chapter 272 who are employed by school districts, area education agencies and community colleges, adopting a two-step procedure for those employees which omits fact-finding. The fact-finding step was eliminated for all bargaining units effective in FY 11.

Iowa Code sections 20.1(4) and 8A.415 impose upon PERB the responsibility to hear and decide grievance and disciplinary action appeals filed by certain employees covered by the state merit system. Iowa Code section 70A.28 also directs PERB to hear and decide appeals filed by certain state employees who assert that they were retaliated against after disclosing information which purportedly evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Since its inception, PERB has certified representatives for over 1,580 bargaining units and has issued approximately 1,725 formal decisions. During FY14, PERB provided impasse resolution services (mediators and/or arbitrators) in 512 disputes involving county, city, school district, area education agency and community college employers and their employees.

SUMMARY OF PERB DUTIES

I. BARGAINING UNIT DETERMINATIONS/REPRESENTATION ELECTIONS

Bargaining unit questions continue to generate a great deal of agency activity. As part of its statutory responsibility to determine appropriate bargaining units and conduct representation elections under Iowa Code sections 20.13-20.15, the Board received 48 petitions in FY 14. Petitions to amend the composition of existing bargaining units were the most frequent type of unit filings.

Representation elections constitute the most visible PERB activity in these statutory areas. In an effort to minimize costs by eliminating the expense and travel time necessary for PERB employees to conduct representation elections at work sites throughout the state, during FY 14 all elections were conducted utilizing PERB's established mail-balloting procedures. Public employees are provided maximum opportunity to participate in the process which determines, by secret ballot, whether they will be represented by an employee organization for the purpose of collective bargaining, and if so, the identity of their labor representative. Eligible voter participation rates of 80-100% are not uncommon. The average participation rate was 78.18%, ranging from 60% to 100%.

During FY 14, PERB processed 21 election petitions and conducted 18 elections. The number of representation elections during FY 14 demonstrates a continued interest in collective bargaining activities in the Iowa public sector. The number of public sector bargaining units in Iowa has increased from 421 in 1975 to 1,208 during FY 14.

II. ADJUDICATORY FUNCTIONS

One of PERB's primary responsibilities involves the processing and adjudication of a variety of cases filed with the agency pursuant to the PERA, including unit determination cases (those involving the composition, amendment, clarification and reconsideration of appropriate bargaining units), prohibited practice complaints (cases involving claimed violations of the statutory rights of public employers, public employees or employee organizations), declaratory orders (cases seeking PERB's interpretation of PERA provisions) and negotiability disputes (cases interpreting the scope of the mandatory subjects of bargaining). Although some acts constituting prohibited practices may also be remedied by resort to contractual grievance procedures or action in the district courts, PERB possesses exclusive original jurisdiction over all employee claims which allege an employee organization's breach of its Iowa Code section 20.17 duty to fairly represent all employees in a collective bargaining unit. PERB also serves as the final administrative step in personnel action cases adjudicating grievances and disciplinary actions filed by state merit system employees pursuant to Iowa Code section 8A.415. Additionally, certain state employees may file an appeal with PERB claiming retaliation for the disclosure of information evidencing a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety under Iowa Code section 70A.28.

Each petition filed with the agency is initially assigned to an Administrative Law Judge (ALJ) who, by working with the parties involved, attempts to informally resolve the matter prior to a hearing. If all issues are not resolved, the case is referred to either the Board or an ALJ, and a hearing is held. In cases assigned to an ALJ, a proposed decision and order is issued which becomes the final agency decision unless it is appealed to or reviewed on motion of the Board. Declaratory order and negotiability disputes are heard and decided by the Board without the involvement of an ALJ.

Judicial review of PERB decisions is governed by the Iowa Administrative Procedure Act, Iowa Code chapter 17A. The district courts, sitting in an appellate capacity, review the record created before the agency to determine whether any of the grounds for reversal or modification of

agency action specified by Iowa Code section 17A.19 have been established. District court decisions reviewing PERB actions are appealable to the Iowa Supreme Court.

In addition to deciding contested cases, the Board and its administrative law judges act as grievance mediators and arbitrators, upon mutual request of the parties, in cases involving disputes arising under collective bargaining agreements.

During FY 14, 71 prohibited practice complaints, petitions for declaratory rulings, state employee grievance or discipline appeals, petitions for resolution of negotiability disputes and other non-unit cases were filed with PERB.

See page 11 for further review of FY 14 cases.

III. COURT ACTION: JUDICIAL REVIEW

In addition to serving as ALJs, PERB staff attorneys represent PERB in the courts when any final agency action is judicially reviewed. In so doing, PERB attorneys prepare pleadings, draft briefs and deliver oral arguments in cases before the district courts, the Iowa Court of Appeals and the Iowa Supreme Court.

During FY 14, two new petitions for judicial review were filed in the district courts.

Five decisions judicially reviewing PERB action were issued in FY 14. For more information concerning this decision, see “Judicial Review Decisions” at p. 12.

IV. IMPASSE RESOLUTION SERVICES

One often-overlooked aspect of collective bargaining impasse resolution under the PERA is the parties' ability to design their own impasse-resolution procedure. Iowa Code section 20.19 directs the parties, as the first step in the performance of their duty to bargain, to endeavor to agree upon impasse-resolution procedures. The only restriction specifically placed upon the parties' ability to tailor their own impasse procedures is the section's requirement that any agreed or "independent" impasse-resolution procedures provide for their implementation not later than 120 days prior to the applicable deadline for the completion of the process.

Parties have frequently exercised this ability to design and utilize independent impasse procedures, which may take many forms. Such procedures often change the date for exchange of final offers or provide for a completion date different than the otherwise-applicable statutory deadline. As with the "statutory" impasse-resolution procedures, summarized below, PERB offers parties operating under independent procedures whatever impasse-resolution services they may require which are within PERB's ability to provide.

If the parties fail to agree upon independent impasse procedures as contemplated by section 20.19, the statutory impasse-resolution procedures set out in Iowa Code sections 20.20-20.22 apply. For all bargaining units including those which include teachers licensed under Iowa Code chapter 272 and are employed by school districts, area education agencies or community colleges, the statutory impasse-resolution procedure consisted of two steps: mediation, which if unsuccessful in producing a complete agreement, is followed by binding arbitration. PERB's professional staff and board members serve as mediators, and PERB also maintains a list of qualified ad hoc mediators, as well as lists of arbitrators to assist in the resolution of bargaining impasses. Mediators from the Federal Mediation and Conciliation Service (FMCS) also provide mediation services for PERB.

Statutory impasse procedures are initiated by the filing of a request for mediation. Upon the filing of such a request, PERB appoints a mediator to the dispute during a statutorily-prescribed period, who meets with the parties to assist them in reaching a voluntary agreement. If mediation does not produce a complete agreement upon the terms of a contract, arbitration can be requested. Upon receipt of an arbitration request, PERB provides a list of arbitrators to the parties from which one is selected to serve as the sole arbitrator. A hearing is held, and an arbitration award is issued

which, absent judicial intervention, is binding on the parties and establishes the disputed terms of their collective bargaining agreement.

The success of Iowa's impasse-resolution process is evinced by the fact that since the PERA became effective there has been only one public-sector strike and, most significantly, approximately 95% of all bargaining impasses have been resolved without resort to binding arbitration. In FY 14, the agency received requests for mediation in 512 bargaining impasses (591 in FY 13), only 14 of these impasses ultimately proceeded through arbitration--a pre-arbitration resolution rate of 97.26%. The table below provides more detailed impasse data concerning FY 14.

HISTORICAL IMPASSE ACTIVITY

YEAR	TOTAL REPRESENTED UNITS	REQUESTS FOR IMPASSE SERVICES	MEDIATED SETTLEMENTS	FACT-FINDING REPORTS ISSUED	INTEREST ARB. AWARDS ISSUED
1975-76	421	305	195	44	25
1976-77	572	357	203	60	41
1977-78	638	440	253	36	27
1978-79	680	448	258	57	22
1979-80	724	475	323	43	28
1980-81	765	522	332	74	46
1981-82	800	568	347	42	43
1982-83	815	593	402	94	53
1983-84	826	611	399	71	41
1984-85	863	695	385	103	51
1985-86	863	792	356	94	45
1986-87	899	680	431	86	42
1987-88	935	673	430	70	38
1988-89	969	628	410	97	45
1989-90	992	673	457	110	48
1990-91	999	693	456	65	30
1991-92	1017	627	413	29	53
1992-93	1027	740	496	33	36
1993-94	1036	698	391	37	42
1994-95	1052	726	398	21	31
1995-96	1062	575	340	21	24
1996-97	1070	619	351	26	34
1997-98	1087	569	312	19	40
1998-99	1098	661	369	23	35
1999-00	1106	582	305	20	34
2000-01	1111	589	313	19	30
2001-02	1114	604	325	15	25
2002-03	1130	677	354	37	33
2003-04	1154	644	332	30	26
2004-05	1157	686	321	18	23
2005-06	1171	623	303	17	17
2006-07	1169	587	272	8	12
2007-08	1174	582	248	12	15
2008-09	1178	603	299	12	6
2009-10	1191	557	264	9	27
2010-11	1207	685	262	NA	29
2011-12	1205	607	225	NA	12
2012-13	1211	591	187	NA	14
2013-14	1208	512	181	NA	14

V. RESEARCH & INFORMATION SERVICES

Pursuant to Iowa Code sections 20.1 and 20.6, PERB collects and makes available to the public various types of information relating to public employment and public sector collective bargaining in Iowa. During FY 06, the Board decided to transition to an internet-based system for the distribution of agency information and to discontinue its existing "paper" systems for indexing\researching agency decisions and providing other informational services.

In FY 07, the Board partnered with an information technology provider to develop a database and search engine for all final agency decisions and PERB-related court decisions. This system became operational during FY 08. The system is a powerful search tool and offers a comprehensive collection of documents. There are three databases of full-text documents in the system: Contracts, PERB and Court Decisions, and Neutral Decisions. For each database, the system displays an index of its full-text documents, allows electronic access to these documents, and provides search functions to facilitate research by any user. The databases are accessible through the "Searchable Databases" link on the PERB website's homepage, which allows public access. In FY10, ALJ's conducted several training sessions on the system for its constituents. Volumes of the hard-copy index and digest of PERB decisions covering decisions issued from 1974 through June 30, 2005 are still available from the agency.

In the past, the Board produced annual "Contract Summaries" which summarized major contract provisions for city, county, police/fire, and school district support units. During FY 07, the Board discontinued the publication of these summaries when it implemented the contracts database. The database is searchable and allows immediate access to more complete and accurate information than could be provided through the contract summaries. Biographical data concerning arbitrators listed with PERB is also available on the website.

Copies of collective bargaining agreements, fact-finders' recommendations, and the awards of interest and grievance arbitrators are available from PERB. The Board also makes available impasse-resolution information contained in PERB's data files and provides access to the PERB library for research purposes.

PERB's website address is: http://iowaperb.iowa.gov.

VI. ELECTRONIC FILING

In the Spring 2014, the Iowa General Assembly passed HF2172, which amended Iowa Code section 20.24 and provided that the Board establish by rule an electronic filing and notice system. In response to this statutory change, the Board enacted chapter 16 of its administrative rules, which establishes PERB's electronic filing (or e-filing) system and governs its use.

During FY14, in anticipation of the statutory amendment, the Board partnered with a technology development company to design an all-inclusive system for the filing, service, management, and storage of all documents in adjudicatory proceedings before the agency. Three distinct technological products comprise the e-filing system: an online filing interface, a case management system, and a document management system. The document management system stores all documents filed with the agency. The case management system stores the data associated with a case and allows for queries to be run against that data. The online filing interface interacts with the document management system and the case management system to recall information for the user to access and allows the user to submit information and documents to the document management system and case management system. The online filing interface is accessible through the "eFiling" link on the PERB website's homepage.

Based off the same platform, PERB's online filing interface mimics the look and feel of the Iowa Judicial Branch's e-filing system, and therefore, provides ease of use for constituents already familiar with the court's system. These advanced systems improve workflow, reduce

costs associated with paper filings for both PERB and its constituents, and grant the public real-time access to all case filings, unless otherwise protected by law.

PERB introduced the system to constituents at its 2014 conference and it became operational in FY15. All cases initiated on or after January 1, 2015, must be electronically filed.

VII. CERTIFIED EMPLOYEE ORGANIZATION REPORTS

Pursuant to Iowa Code section 20.25, PERB monitors certain internal operations of certified employee organizations and enforces compliance with statutory requirements. It ensures that each certified employee organization has a constitution and by-laws filed with the agency that contain certain safeguards relating to financial accountability and membership rights as set out in the statute. It maintains these records, which are updated when changes in the organizations' governing documents are reported. The Board also receives, reviews and maintains each certified employee organization's annual report, including a financial statement and audit, which is required for the employee organization to maintain its certification. It gives advice on the completion of the documents and issues delinquency letter and orders hearings when organizations are not in compliance. During FY 14, PERB received reports from 600 certified employee organizations representing the 1,208 collective bargaining units for which a representative is currently certified.

VIII. PERB'S INTEREST-BASED COOPERATION (IBC) PROBLEM-SOLVING PROCESSES

During its 40-year history, PERB has provided mediation, training, and facilitation services to state, county, city and school district employees and their employers. It is PERB's statutory duty to promote harmonious and cooperative relationships between government and its employees which motivates PERB's interest-based cooperation (IBC) problem-solving processes.

INTEREST-BASED BARGAINING

Interest-based bargaining (IBB) is a process designed as an alternative to the traditional, adversarial process to settle contract disputes.

The legal duty to bargain a contract requires labor and management to follow an impasse resolution process contained in the Public Employment Relations Act (PERA). This process includes mediation and arbitration as the legislatively mandated steps to resolve disputes over the list of mandatory subjects of bargaining contained in the PERA. Labor and management have typically used traditional, adversarial bargaining methods and strategies under the PERA's impasse resolution process. That is, each have taken positions and offered proposals and counterproposals to resolve the outstanding issues before them.

IBB focuses on labor and management interests as opposed to bargaining positions. IBB contains three key elements. First, a commitment from labor and management leadership to move from an adversarial to a joint problem-solving process. Second, the use of consensus decision-making. Third, an agreement on specific ground rules; that is, how the parties will conduct themselves during contract negotiations. PERB serves as facilitators and trainers of the IBB process.

LABOR-MANAGEMENT COMMITTEE

A labor-management committee (LMC) is an alternative dispute resolution process. An LMC is designed to build better working relationships through cooperation and problem-solving using consensus decision-making. An LMC is not intended to replace either contract negotiations or a contractual grievance procedure.

The initial focus of an LMC is to develop the LMC's statement of purpose, and establish the LMC's ground rules. An LMC's statement of purpose varies according to labor's and management's needs. LMCs have been established to address specific needs, for example health care costs, as well as broader issues such as how to build and maintain trust at the workplace. In addition to establishing procedural ground rules, *i.e.* who are the members of the LMC and when the LMC will meet, the LMC also establishes substantive ground rules including respecting each other's opinions, developing a working definition of consensus decision-making, and requiring the LMC to focus on problems, not people.

LMCs, facilitated by PERB, continue to function primarily with state, county, cities, and school districts, and their respective unions or associations to address workplace issues.

GRIEVANCE MEDIATION

Grievance mediation is an alternative dispute resolution process designed to address and resolve workplace disputes. In grievance mediation, labor and management explore possible "win-win" settlements of grievances in order to avoid the "win-lose" scenario, which results from a grievance arbitration. PERB provides experienced mediators to assist parties in resolving grievances prior to arbitration. PERB's experience has been that, in approximately 90% of the cases, mediation settles the issue without the need for arbitration. Grievance mediation is not a substitute for arbitration. However, if the parties can reach a mutually acceptable resolution this process can save arbitration expenses.

I. BOARD - DECLARATORY ORDERS

Iowa Code section 17A.9 requires each agency to provide by rule for the filing and disposition of petitions for declaratory orders as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. Chapter 10 of PERB's rules governs such proceedings. In addition, the Board has enacted other rules for a specialized type of petition for declaratory order (discussed below)--those which raise negotiability questions requiring expedited processing. During FY 14, the agency received two petitions and issued one Declaratory Order.

II. BOARD - EXPEDITED NEGOTIABILITY RULINGS

The scope of bargaining for public employers and employee organizations is set out in Iowa Code section 20.9. Subjects of bargaining are divided into three categories. There are mandatory subjects, on which bargaining is required if requested (wages, hours, vacations, etc.), permissive subjects, on which bargaining is permitted but not required, and illegal subjects, on which bargaining is precluded by law. The classification of a particular item is important not only as it relates to the duty to bargain, but also because only mandatory items may be taken through statutory impasse-resolution procedures absent mutual agreement of the parties.

Because it is not uncommon for the parties to disagree, either during negotiations or impasse-resolution procedures, as to whether certain contract proposals are mandatorily negotiable, it is sometimes necessary for PERB to make a legal determination as to the negotiability status of disputed proposals. Pursuant to its Iowa Code section 17A.9 authority to establish rules for the disposition of petitions for declaratory orders, PERB has established, by rule, an expedited mechanism for the resolution of such negotiability issues.

Pursuant to this procedure, the parties petition PERB for an expedited negotiability ruling, setting out the precise language of the proposal(s) at issue. The parties are allowed to submit written and/or oral arguments to PERB on the issues. PERB then issues a short-form "Preliminary Ruling" on the matter, designating each proposal at issue as mandatory, permissive or illegal, without supporting rationale or discussion. This preliminary ruling is not final agency action. If, after receiving a preliminary ruling, a party desires a final agency ruling supported by written reasoning, such may be requested in writing within 30 days and a final ruling will be issued.

During FY 14, the agency issued two preliminary rulings and did not issue any final negotiability rulings.

III. BOARD - OBJECTIONS TO IMPASSE

Chapter 20 has been interpreted by the Board and the courts as requiring the completion of bargaining and impasse-resolution services by a particular date, absent certain recognized exceptions. The Board has established, by rule, a procedure for raising objections to the conduct of further impasse-resolution procedures where it appears the applicable deadline will not be met. Although this has at times been a fertile area for litigation, in FY 14 one objection to impasse case was filed, but the Board was not required to issue any rulings in this area.

IV. OBJECTIONS TO ELECTIONS

Upon written objections filed by any party to a representation election, the Act allows the Board to invalidate an election and hold a second election if the Board finds that misconduct or other circumstances prevented the eligible voters from freely expressing their preferences. The Board has established rules governing objections to elections. In FY 14, one election objection case was filed with the agency and a ruling was issued.

V. CONTESTED CASE DECISIONS

"Contested cases" are proceedings in which the opportunity for an evidentiary hearing is required by statute or constitution before the rights, duties or privileges of parties are determined by an agency. Although at times forming a significant part of the Board's caseload, neither petitions for declaratory orders, petitions seeking the resolution of negotiability disputes nor objections to continued impasse-resolution procedures constitute true contested cases.

During FY 14, the Board and its administrative law judges issued 15 rulings or decisions in true contested cases involving the composition of collective bargaining units, alleged prohibited practices and state employee grievance or disciplinary action appeals.

VI. JUDICIAL REVIEW DECISIONS

Final PERB decisions are subject to judicial review by the district courts pursuant to Iowa Code section 17A.19, and the resulting district court judgments are then subject to review by the Iowa Supreme Court or Court of Appeals.

In FY 14, five opinions reviewing PERB decisions were issued by the courts, one by the Supreme Court, one by the Court of Appeals and three by the Polk County District Court:

Board of Regents, State of Iowa and the University of Northern Iowa v. PERB and UNI-United Faculty, Polk Co. Dist. Ct. No. CVCV009268 (9/29/13).

In 2012, the Board issued a declaratory order in response to a petition filed by UNI-United Faculty and ruled that an "early separation incentive program" offered by UNI to certain tenured faculty in program areas identified for closure or restructuring was a mandatory subject of bargaining within the topic of "procedures for staff reduction," but was not mandatory under the topics of "wages" or "insurance."

The program was a self-described "tool to shape, redirect, and focus the faculty work force" at UNI and was acknowledged by the employer as having been designed to induce eligible employees to voluntarily leave their employment. The program operated by soliciting volunteers from discontinued or restructured programs who were willing to resign their positions in exchange for a stated financial incentive (based upon a formula which involved accrued sick leave, salary at the date of separation and health and dental insurance costs), then provided the employer with an opportunity to accept the resignations of those whose departure it deemed most advantageous, based upon its assessment of UNI's best interests.

The Board identified the predominant purpose, goal, characteristic or topic of the program as the reduction of the number of tenured faculty in certain program areas, and thought it clear that the detailed program constituted a procedure, with staff reduction as its purpose. It rejected the argument that the program was not within the procedures for staff reduction topic because it did not involve the order and manner in which staff reduction will occur and because it was voluntary, with no possibility of recall or re-employment for participants. While acknowledging that the topic includes the order and manner in which staff reductions will occur, the Board noted that it had never so limited the topic and that the UNI program did in fact relate to the order of staff reduction since its effect was to place those volunteers whose incentivized offers to resign were accepted at the head of the line of those to be reduced. And the Board was similarly unpersuaded by the argument that its voluntary nature took the program outside the topic—an argument the Board viewed as a claim that "procedures for staff reduction" was intended by the legislature to instead mean "procedures for *involuntary* staff reduction. The Board also rejected the argument that the program was a prohibited/illegal topic of bargaining as a "retirement system" because it did not augment or supplement statutory retirement benefits participating employees would receive (even if they did retire upon separation). The Board viewed the incentive payment provided by the program as much more akin to the one-time-at-separation payments in *Professional Staff Association,* 373 N.W.2d 516 (Iowa App. 1985) and *Taylor County,* 02 PERB 6490.

The public employer sought judicial review in the Polk County District Court, which affirmed the Board's declaratory order and rejected the employer's argument that PERB had misapplied the two-step negotiability analysis set out in *Waterloo II*. The court determined that PERB's interpretation of section 20.9 was not an irrational, illogical or wholly unjustifiable interpretation of the statute, or was unreasonable, arbitrary, capricious or an abuse of discretion. The court also rejected reversal of the PERB ruling that the program was not a retirement system excluded from the scope of bargaining.

The employer filed a timely appeal from the district court's order, and the appeal was transferred to the Iowa Court of Appeals. All parties have filed briefs and the case is awaiting decision by that Court as of the date of the preparation of this Annual Report, the case having been submitted, without oral argument, on June 17, 2014.

IAFF Local 2607 v. PERB and Cedar Rapids Airport Commission, Polk Co. Dist. Ct. CV046087 (2/10/14).

The public employer's petition to PERB for its issuance of a declaratory order posed the question of whether the employer has the exclusive right and authority under chapter 20 to determine the hours of operation of its airport, including the right and authority to determine that the airport's hours of operation will be fewer than 24 hours per day. The employer maintained that it possessed such authority, while the employee organization urged that the Board answer the employer's question in the negative because, it argued, the airport's hours of operation is a matter within the scope of the 20.9 mandatory topic of "hours."

The Board ultimately determined that the employer does possess the exclusive right and authority under chapter 20 to determine the airport's hours of operation will be fewer than 24 per day, subject to its duty to negotiate true "hours" proposals which predominantly relate to the employment relationship. In reaching that conclusion the Board noted established caselaw to the effect that "hours" includes the total number of hours in an employee's workday, the starting and quitting times, break times and employees' right to be notified of their hours of work—all matters which are predominantly related to the employment relationship, unlike the times the employer is open for business. But proposals dealing with the employer's ability to direct its operations, such as assignments and staffing, have been held to be non-mandatory. The Board stated:

> The mandatory topics outlined in section 20.9, including "hours," address issues uniquely related to the employees' relationship with their employer. The Board must define "hours" as an exception to the employer's section 20.7 rights through this lens. If the "hours" proposal is not predominantly related to the employment relationship, then it is not a mandatory subject of bargaining.

The Board indicated that an employer's hours of operation are not predominantly related to the employment relationship, but rather to the relationship between the public employer and its constituents—when and how long a public employer operates or is "open for business" affects the level of service the public employer provides to the public. It concluded:

> The context of section 20.9 requires that each mandatory topic, including "hours," predominantly relate to the employment relationship. Employees' starting and quitting times, break times, and the number of hours an employee works in a given shift, day, week, month, or year undisputedly relate predominantly to the employment relationship. But operational hours are "essentially an issue of level of service to the public, a policy matter reserved to the [Commission]." *City of Sioux City*, 78 PERB 1211, at p. 2 (Feb. 22, 1978)(citing *City of Dubuque*, 77 PERB 964 (Mar. 9, 1977)).

Local 2607 sought judicial review in the Polk County District Court, which affirmed

PERB's declaratory order. The court, characterizing the issue as whether "operational hours" is a mandatory or merely permissive topic of bargaining, noted that Iowa Code section 20.6(1) states that PERB shall "interpret, apply, and administer the provisions of this chapter," and that since it has been vested with such interpretive authority a court may reverse the agency's interpretation only if it is irrational, illogical or wholly unjustifiable. Concluding that PERB's interpretation of "hours" suffered from none of these defects, the court affirmed.

Local 2607 filed a timely appeal from the District Court's ruling, but voluntarily dismissed its appeal prior to the filing of briefs in the Supreme Court.

AFSCME Iowa Council 61 & State of Iowa v. PERB, Polk Co. Dist. Ct. No. CVCV9631 (7/15/13); Iowa S.Ct. No. 13-1158 (5/9/14).

In response to a petition filed by the State, PERB issued a negotiability ruling in February, 2013, on 12 bargaining proposals made by AFSCME, and found eight of them to be permissive subjects of bargaining and four to be mandatorily negotiable, at least in part.

AFSCME sought judicial review of PERB's ruling on six of the proposals held to be permissive, and the State sought review of PERB's ruling that a portion of another proposal was mandatory under the topic of "procedures for staff reduction." The Polk County District Court affirmed the PERB decision except for its ruling on section B of proposal 8, which provided:

> B. If, as a result of outsourcing or privatization following an Employer initiated competitive activities process, positions are eliminated, the Employer shall offer affected employees other employment within Iowa State government. Other employment shall first be sought within the affected employee's department and county of employment. Affected employees accepting other employment shall not be subject to loss of pay nor layoff pending placement in other employment under this Section. Neither shall such employees be subject to a decrease in pay in their new position. However, affected employees will not be eligible for any pay increase until such time as their pay is within their new pay grade range. In the alternative, employees may elect to be laid off.
>
> Employees placed in other employment under this Section, as well as those electing to be laid off, will be eligible for recall to the classification held at the time of outsourcing or privatization, in accordance with Article VI of this Agreement.

The Board had found this proposal to be a mandatory subject of bargaining as a "procedure for staff reduction" noting,

> [The proposal] requires the employer to offer employees, whose positions would be eliminated due to outsourcing, the choice of either being laid off or being employed elsewhere within Iowa State government. It includes other procedures and restrictions on where the displaced employee can be employed and how the employee shall be paid. At its core, its predominant purpose is to designate a process for implementing a staff reduction that occurs due to outsourcing. It addresses what will happen to bargaining unit members once the employer has determined it will eliminate positions within the bargaining unit.

The Board rejected the State's argument that the predominant purpose was "staff retention" rather than "staff reduction," finding that this argument related to the proposal's merits rather than its negotiability status.

The Polk County District Court reversed the Board's decision on this proposal, explaining:

> The court concludes that the statutory phrase "procedures for staff reduction" relates to the manner in which the contemplated reduction will take place, not how to manage the consequences associated with a reduction that has already taken place.

> In the court's mind, this conclusion hinges upon the word "for," which is defined in this context as a function word used to indicate purpose or an intended goal. *Merriam-Webster's Collegiate Dictionary* 454 (10th ed. 2001); *see also Wiseman v. Armstrong*, 269 Conn. 802, 811, 850 A.2d 114, 119 (2004). In other words, for the procedures in question to be considered mandatory under § 20.9, they must have as their purpose, goal or object a reduction in staff. As measured by this standard, [the] proposal [] falls short; its predominant purpose relates to the aftermath of a reduction that has already resulted from outsourcing or privatization. It would, therefore, not qualify as a mandatory subject for bargaining under § 20.9. Even allowing for the deference PERB is afforded in this case, its analysis does not comply with the "definitional exercise" reaffirmed in *Waterloo II*.

AFSCME appealed the district court's ruling on the above proposal and the Supreme Court retained the case, issuing its decision in July 2014. The Court noted that the legislature vested PERB with express interpretive authority in 2010; thus its review was restricted to determining whether PERB's decision was "irrational, illogical or wholly unjustifiable" under Iowa Code § 17A.19(10)(l), (m). It also reaffirmed that *Waterloo II* established the correct analytical approach for negotiability disputes. Further, it held that PERB's definition of "procedures for staff reduction" as "procedures that describe the order and manner of how a staff reduction will be carried out" is consistent with a common and ordinary meaning of the term and was not irrational, illogical or wholly unjustifiable. However, it was unable to determine whether the predominant purpose of the proposal was "staff reduction" or "staff retention." It concluded that "a staff reduction occurs only when an employee leaves the State payroll, not merely when a particular job position is eliminated." It continued:

> [a] "staff reduction" under section 20.9 requires "that there has, in fact, been a reduction in the total work force and not simply the substitution of one position for another.''

However, the court concluded that the record was inadequate to determine whether a staff reduction actually occurs through the proposal. It ultimately instructed the district court to remand the case back to PERB for a new determination of the issue stating,

> [W]e hold, to the extent the primary purpose of [the proposal] is to preclude the State from reducing staff in response to outsourcing, it is a permissive rather than mandatory subject of bargaining. Nevertheless, if PERB determines on remand that the State is permitted to reduce employment by bumping employees after transfers resulting from outsourcing, then [the proposal] can be found to be a mandatory subject of bargaining.

As of the date of the preparation of this Annual Report, the district court has not remanded the case back to PERB so no further proceedings are scheduled at this time.

Fort Dodge Community School Dist. v. PERB et al., Iowa Court of Appeals No. 3-1179/13-0879 (6/25/14).

In October, 2007, the Iowa Supreme Court decided *Waterloo Education Assn. v. PERB and Waterloo Comm. School Dist.,* 740 N.W.2d 418 (Iowa 2007), (now commonly referred to as *Waterloo II*), a negotiability dispute over whether a proposal for teacher "overload" pay was mandatorily negotiable as "wages". *Waterloo II* was significant for a number of reasons, one of which was the court's apparent rejection of the oft-repeated principle that the mandatory topics of bargaining specified in Iowa Code section 20.9 were to be given narrow and restrictive meanings. Instead, the *Waterloo II* court stated:

> [T]he legislature's use of a laundry list of negotiable subjects does not mean the listed terms are subject to the narrowest possible interpretation, but only that the listed terms cannot be interpreted in a fashion so expansive that the other specifically

> identified subjects of mandatory bargaining become redundant. The approach most consistent with legislative intent thus is to give the term "wages" its common and ordinary meaning within the structural parameters imposed by section 20.9.

Five years later, PERB issued a decision concerning the negotiability status of five severance pay proposals advanced by the certified employee organizations representing employees of the Fort Dodge Community School District. *Fort Dodge Comm. School Dist.,* 12 PERB 8512. The employee organizations in that case argued that the proposals were mandatorily negotiable as "supplemental pay," even though the Iowa Supreme Court, expressly applying the narrow and restrictive approach to the interpretation of the section 20.9 topics, had held in 1982 that "supplemental pay" was limited to pay for services rendered over and above an employee's primary duties—such as a teacher who performs extra duties as a coach. *Fort Dodge Comm. School Dist. v. PERB*, 319 N.W.2d 181, 184 (Iowa 1982). The Iowa Court of Appeals, citing the Supreme Court's *Fort Dodge CSD* decision, had also ruled that a proposal similar to those at issue before the Board was only a permissive topic of bargaining. *Professional Staff Assn. of AEA 12 v. PERB*, 373 N.W.2d 516 (Iowa App. 1985).

In considering the negotiability of the employee organizations' severance pay proposals in its 2012 decision, the Board noted *Waterloo II*'s subscription to the principle that the section 20.9 topics are to be given their common and ordinary meaning, which it viewed as a rejection of the "narrow and restrictive" approach previously given to the interpretation of the topics. The Board stated:

> Accordingly, when determining the negotiability status of a proposal in the wake of *Waterloo II,* it is necessary that the Board consider not only the appellate court precedents concerning the meaning of a given section 20.9 topic, but also whether those precedents were the result of the application of the now-disapproved narrow and restrictive approach to interpretation and should no longer be viewed as controlling authority.

Because the courts' earlier view of supplemental pay had been based upon a narrow and restrictive interpretation of the term, the Board addressed the question of the term's "common and ordinary" meaning in the context of section 20.9. After consideration of dictionary definitions, definitions from other jurisdictions and IRS regulations, the Board ultimately defined supplemental pay as "a payment of money or other thing of value that is in addition to compensation received under another section 20.9 topic and is related to the employment relationship." Accordingly, the Board concluded that the severance pay proposals before it, which provided for a cash payment upon termination, were conditioned upon length of service and were calculated based upon unused accumulated sick leave, were not included within any other section 20.9 topic and were mandatorily negotiable "supplemental pay" proposals.

On judicial review, the district court agreed that the courts' earlier supplemental pay cases were no longer controlling in view of *Waterloo II,* and also noted the legislature's 2010 amendment of section 20.6(1) which had empowered the Board to interpret and apply the provisions of chapter 20. Accordingly, it affirmed PERB's negotiability ruling.

On the employer's appeal from the district court, the Court of Appeals characterized *Waterloo II* as "rejecting the conclusion the terms in section 20.9 should be given a restrictive reading as opposed to their ordinary and common reading," with the result that this rejection of the narrow and restrictive approach had largely undermined the precedental value of the earlier decisions which had employed it. The court found itself unable to conclude that PERB's interpretation of the supplemental pay topic was irrational, illogical, or wholly unjustifiable, and it too affirmed the PERB negotiability ruling.

The school district's application for further review of the PERB decision by the Iowa Supreme Court was denied on September 11, 2014.

LISTS OF QUALIFIED NEUTRALS MAINTAINED BY PERB

The PERA requires PERB to maintain lists of qualified mediators and interest arbitrators, and Iowa Code chapter 279 requires PERB to maintain a list of qualified teacher-termination adjudicators. PERB also maintains a list of qualified grievance arbitrators for parties to utilize.

In 1991, pursuant to legislation which had amended Iowa Code section 20.6, PERB established minimum qualifications for these neutrals and established procedures for appointing neutrals to the various lists, for maintaining the lists, and for removing neutrals from the lists. A neutral may be removed from a list by request of the neutral or through procedures initiated by PERB or a complaining party. A neutral may also request that he or she be placed on inactive status for periods of time, due to unavailability.

As of June 30, 2014, PERB's neutral lists included 61 active grievance arbitrators and interest arbitrators (18 of whom are Iowans) and 28 active ad hoc mediators (26 of whom are Iowans and 3 individuals who are being trained as ad hoc mediators).

PERB BUDGET
FISCAL YEARS 2013 & 2014

		ACTUAL FY 13	ACTUAL FY 14
RECEIPTS			
	Appropriations	1,278,426	1,341,926
	Salary Adjustment	0	0
	Training & Technology Carry Forward	16,328	42,188
	Chapter 8.31 Reduction	0	0
	Legislative Reduction	0	0
	Transfer	0	0
	DAS Distribution	0	526
	Reimbursement from Other Agencies	1,450	0
	Miscellaneous Income	42,964	10,321
TOTAL		$1,339,168	$1,394,961
EXPENDITURES			
101	Personal Services	1,099,721	$1,206,195
202	In State Travel	21,221	8,695
205	Out of State Travel	2,436	17,733
301	Office Supplies	11,846	11,899
309	Printing & Binding	4,411	1,002
313	Postage	4,035	1,845
401	Communications	6,111	5,567
402	Rentals	3,853	0
406	Outside Services	49,198	31,651
409	Outside Repairs	1,383	1,705
414	Reimbursements –Other agencies	25,831	26,494
416	ITS Reimbursements	6,836	10,192
417	Workers Compensation	0	0
418	IT Outside Services	0	45,000
434	Gov FundTransfers-Other Agencies Serv.	800	80
503	Equip Non-Inventory	13,079	314
510	IT Equipment	3,011	3,186
705	Refunds/Other	1,020	0
TOTAL		$ 1,254,792	$1,371,559
REVERSION		84,376	23,402
TRAINING & TECHNOLOGY CARRY FORWARD (50% of reversion)		42,188	11,701